TILE COPY

FILED
MAY 16 1960
JAMES R. BROWNING, Clerk

No. 94191

In the Supreme Court of the United States

OCTOBER TERM, 1959

UNITED STATES OF AMERICA, APPELLANT

v.

ROY FRUEHAUF, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

J. LEE RANKIN,
Solicitor General,
MALCOLM RICHARD WILKEY,
Assistant Attorney General,
BEATRICE ROSENBERG,
EUGENE L. GRIMM,
Attorneys,
Department of Justice, Washington 25, D.C.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	3
The question is substantial	5
Conclusion	11
Appendix A	12
Appendix B	13

CITATIONS

Cases:	
Malatkofski v. *United States*, 179 F. 2d 905	7
United States v. *Golden, et al*, Cr. No. 32479, N.D. N.Y	6
United States v. *Ryan*, 225 F. 2d 417 reversed, 350 U.S. 299	7, 8
Statutes:	
Labor Management Relations Act of 1947, Section 302, 61 Stat. 157, 29 U.S.C. 186	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11
Labor-Management Reporting and Disclosure Act of 1959, Section 505, 73 Stat. 537	2, 3, 4, 5, 8, 10
18 U.S.C. 201	6, 7
18 U.S.C. 202	6
18 U.S.C. 204–216	6
18 U.S.C. 219–220	6
18 U.S.C. 873	7
18 U.S.C. 875	7
18 U.S.C. 876	7

550411—60

Statutes—Continued

	Page
18 U.S.C. 877	7
18 U.S.C. 912	7
18 U.S.C. 915	7
18 U.S.C. 1025	7
18 U.S.C. 3282	6
26 U.S.C. 7214(a)(9)	6

Miscellaneous:

92 Cong. Rec. 4893	8
93 Cong. Rec. 4678	7, 8
93 Cong. Rec. 4679	8
104 Cong. Rec. 11487	9
105 Cong. Rec. 6745	10
H.R. 8342, § 505, 86th Cong., 1st Sess.	10
H. Rep. 741, 86th Cong., 1st Sess.	10
S. 3974, § 607, 85th Cong., 2d Sess.	9, 10
S. 1555, § 211, 86th Cong., 1st Sess.	10
S. Rep. 105, 80th Cong., 1st Sess.	8
S. Rep. 1684, 85th Cong., 2d Sess.	9, 10
S. Rep. 187, 86th Cong., 1st Sess.	10

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. —

UNITED STATES OF AMERICA, APPELLANT

v.

ROY FRUEHAUF, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

OPINION BELOW

The oral ruling (R. 80–81; Appendix A, *infra*, p. 12) of the district court dismissing the indictment has not been reported.

JURISDICTION

On February 18, 1960, the district court dismissed the indictment on the ground that it did not charge an offense under Section 302 of the Labor Management Relations Act of 1947 (R. 3, 7, 78–81; Appendices A, B, *infra*, pp. 12–13). A notice of appeal to this Court was filed in the district court on March 18, 1960 (R. 84–86). The jurisdiction of this Court to review on direct appeal the decision of the district court dismissing the indictment, on the ground that it did not charge a crime within the meaning of the

statute upon which it was founded, is conferred by 18 U.S.C. 3731.

QUESTION PRESENTED

Section 302 of the Labor Management Relations Act of 1947 made it unlawful for an employer to "pay or deliver" to a representative of any of his employees in an industry affecting interstate commerce, or for such representative to "receive or accept" from the employer, "any money or other thing of value." The question presented is whether a loan of money comes within the foregoing prohibitions.

STATUTES INVOLVED

Section 302 of the Labor Management Relations Act of 1947, 61 Stat. 157, 29 U.S.C. 186, provided, in part, as follows:

> (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.
>
> (b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.
>
> * * * * * *

On September 14, 1959, Section 505 of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 537, amended Section 302, *supra*, to read, in part, as follows:

(a) It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value—

(1) to any representative of any of his employees who are employed in an industry affecting commerce; * * *

* * * * *

(b)(1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a).

* * * * *

STATEMENT

Section 302 (a) and (b) of the Labor Management Relations Act of 1947, *supra*, respectively, made it an offense for an employer to "pay or deliver" to a representative of his employees engaged in an industry affecting interstate commerce, and for such representative to "receive or accept" from the employer, "any money or other thing of value." A two-count indictment filed on June 17, 1959, in the United States District Court for the Southern District of New York charged five defendant employers[1] with having paid and delivered money in the amount of $200,000 to a representative of their employees (R. 1, 5; count 1), and charged the defendant represent-

[1] The employers were Roy Fruehauf, the Fruehauf Trailer Co., Burge Seymour, Associated Transport, Inc., and the Brown Equipment and Manufacturing Co.

ative (Dave Beck) with having received the money (R. 1, 5–6; count 2), in violation of Section 302 (a) and (b), respectively. In a pre-trial memorandum, the government stated that it intended to prove that the defendant employers had loaned $200,000, unsecured and at an actual interest rate of about 2%, to the defendant representative through an intricate exchange of checks; and that the loan was subsequently repaid by the representative. (R. 13–19).

All the defendants orally moved to dismiss. After argument, the district court dismissed the indictment on the ground that Section 302, as it stood at the time of the offenses charged, did not cover loans of money. The court emphasized the fact that Section 505 of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 537, *supra*, amended Section 302 of the 1947 Act to include specifically a prohibition upon loans (R. 78–80). The court stated (*ibid*; Appendix A, *infra*, p. 12):

> * * * Having found as I do on the Government's judicial admission that the transaction was a loan, we must then resolve whether the transaction as a loan was violative of the statute as it was at the time of the transaction, and I am of the opinion that it was not. I reject the argument that the subsequent action and the legislative history upon which that action was predicated by the Congress in 1959 in injecting into the statute the specific words dealing with a loan were intended to broaden that which I take it the Government urges was manifest before. I am, therefore, of the opinion that * * * the [loan] transaction was not

an offense contemplated by the statute as it existed at the time.

* * * * *

I am now granting the motion of all defendants to dismiss the indictment upon the ground that it fails to charge an offense of the statute as it read at the time the transaction occurred.

THE QUESTION IS SUBSTANTIAL

1. This appeal presents a substantial question of statutory construction under the Labor Management Relations Act of 1947 as originally enacted. The court below held that the broad prohibition of Section 302 of that Act, which barred an employer from paying or delivering to an employees' representative, or the latter from receiving or accepting, "*any* money or other thing of value" (emphasis added), does not cover a large unsecured loan by the employer to the representative. We submit, however, that both the language of Section 302 and its purpose, as reflected in its legislative history, indicate that the prohibition applies not only to outright gifts of money, but also to loans. See *infra*, pp. 7–11.

We recognize, of course, that loans made after September 14, 1959 (the effective date of the 1959 Act) are now specifically and unequivocally covered by Section 302. We do not believe, however, that this factor should militate against review. The instant case is an important criminal prosecution, involving a charge that a substantial sum of money was passed as a loan by a major industrial firm and its officers to a former leader of one of the largest unions in the country. The case has received considerable pub-

licity, and the government believes that the district court's dismissal of the indictment rests on an erroneous construction of the statute. In these circumstances, we urge that, whatever may be the effect of the decision below upon future cases (see *infra*), the proper administration of justice calls for review by this Court under its appellate jurisdiction of the district court's dismissal of this important indictment. Under the congressional scheme for review of criminal matters, there is no other tribunal in which review can be had.

Moreover, although the statute has now been amended specifically to cover loans, the holding below that it did not so apply as originally enacted may, if allowed to stand, have considerable future significance. The statute of limitations on loans that may have been made prior to September 14, 1959, will not run until September 13, 1964 (18 U.S.C. 3282). While we know of only one such pending case at present,[2] it is impossible to predict how many more cases may develop prior to the running of limitations. Finally, we note that the restrictive holding below is likely to have an adverse effect as a precedent in the interpretation of other important federal statutes containing similar language. See, *e.g.*, the various statutes dealing with gifts to, bribery of, and graft by federal officers and employees (18 U.S.C. 201–202, 204–216, 219–220; 26 U.S.C. 7214(a)(9)), false

[2] In *United States* v. *Golden, et al.*, Cr. No. 32479, N.D.N.Y., the indictment charged a violation of unamended Section 302 through the loan of a tug-boat. On December 24, 1959, the district court denied defendants' motion to dismiss the indictment, holding that such a loan was covered by the statute.

pretenses and false personation (18 U.S.C. 912, 915, 1025), blackmail (18 U.S.C. 873), and forms of extortion (18 U.S.C. 875(b), (d), 876, 877)—which use such terms as "money or other thing of value," "money, or * * * anything of value", and "valuable thing." It has been held that 18 U.S.C. 201, which prohibits the giving of "any money or thing of value" in an attempt to influence an officer or employee of or acting for the United States, covers a loan of money. *Malatkofski* v. *United States*, 179 F. 2d 905, 917 (C.A. 1).

2. In our view, the district court's narrow construction of Section 302 is erroneous. As enacted in 1947, the Act prohibited the "pay[ment] or deliver[y by an employer of] * * * money or other thing of value" to a representative of his employees, and the receipt or acceptance thereof by the representative. When an employer makes a loan to a representative, he "pay[s] or deliver[s] * * * money" to the representative, and the latter "receive[s] or accept[s]" the money from the employer. Thus, in terms, Section 302 covered loans as well as outright gifts.

Both the purpose of the Act and its legislative history confirm the view that Congress did not intend to create an exception to its "broad prohibition" (93 Cong. Rec. 4678) in favor of loans. One of the major purposes of Congress in the 1947 Act was "to prevent employers from tampering with the loyalty of union officials * * *." Judge Learned Hand, dissenting, in *United States* v. *Ryan*, 225 F. 2d 417, 426 (C.A. 2), reversed, 350 U.S. 299. By "outlaw[ing] all [unauthorized] payments * * * between employer and

representative" (*United States* v. *Ryan*, 350 U.S. 299, 305), Section 302 was designed to protect the integrity of the collective bargaining process by insuring that employers and representatives would deal at arms length. Congress thereby intended to avoid such obvious dangers to employee rights as bribery of the representative (92 Cong. Rec. 4893), extortion by the representative (93 Cong. Rec. 4679), and diversion of welfare funds by representatives to political or personal purposes (93 Cong. Rec. 4678; S. Rep. 105 (80th Cong., 1st Sess., p. 52).

A loan—particularly the loan of a large sum of money at a very low rate of interest—obviously can be just as effective a device for improperly influencing a union official as an unconditional gift. Congress struck at the mere possibility of abuse by prohibiting *all* unauthorized payments or receipts, without requiring a showing that the occurrence actually influenced the collective bargaining process. We submit that the broad language of Section 302 was intended to—and did—cover any payment or receipt that might cause such abuse, and that a loan is just as likely to do so as an outright gift.

3. We do not believe that the amendment of Section 302 by Section 505 of the Labor-Management Reporting and Disclosure Act of 1959 (*supra*, pp. 2–3), specifically to cover loans, justifies the inference drawn by the district court that if Congress thought that Section 302 as originally enacted included loans of money by employers to representatives, it would not have expressly added the words "lend" and "loan" in 1959. Rather, the legislative history of

the 1959 amendments indicates that Congress was there concerned with a totally different problem, and that the addition of the words "lend" and "loan" were merely intended to make explicit what was already implicit in the existing language.

The first proposal to add the words "lend" or "loan" to Section 302, *supra*, was contained in Section 607 of S. 3974, 85th Cong. 2d Sess., a bill which was passed by the Senate (104 Cong. Rec. 11487), but not by the House. Section 607 would have amended Section 302(a), *supra*, so as to make it "unlawful for any employer or any person who acts as a labor relations expert, adviser, or consultant to an employer to pay, lend, or deliver * * * any money or other thing of value" to a representative of the employer's employees. No comparable change was proposed in Section 302(b). The Senate Committee Report on the bill stated (S. Rep. 1684, 85th Cong. 2d Sess., pp. 43–44) that the purpose of Section 607 was "to forbid any payment or bribe by an employer or anyone acting on his behalf, whether technically an agent or not, and to forbid the receipt of any such bribe by any person, whether an individual, an officer, or employee of a labor organization, or a committee representing employees."[3] Thus, the purpose of the proposed amendment was to extend the prohibitions of Section 302 to "middlemen". There is nothing to indicate that, in adding the word "lend", the Senate believed it was expanding the statute to reach payments of a kind not previously covered.

[3] S. Rep. 1684 refers to Section 608, which became Section 607 in S. 3974 as passed by the Senate.

In the next Congress, Section 211 of S. 1555, 86th Cong., 1st Sess., proposed to amend Section 302(a) in substantially the same way as had Section 607 of S. 3974 in the preceding year. The Senate Report (No. 187, 86th Cong., 1st Sess. at p. 43) which accompanied the committee bill made no reference to the addition of the word "lend" and simply repeated, in almost verbatim language, the explanation contained in S. Rep. 1684 (85th Cong. 2d Sess.), *supra*.[4] The House Committee on Education and Labor, to which S. 1555 was referred, used the Senate bill as "the basis of [its] work" in preparing its bill (H.R. 8342, 86th Cong., 1st Sess.), and it accepted all of the Senate's proposed amendments to Section 302. It added associations of employers to the group forbidden to make payments, and changed Section 302(b) of the 1947 Act to reflect the language of Section 302(a). H.R. 8342 (86th Cong., 1st Sess.) Section 505; H. Rep. 741 (86th Cong., 1st Sess.) p. 77. The House Committee stated (H. Rep. 741, *supra*, p. 46) that "The purpose of these amendments to Section 302 is to forbid any payment, loan, or bribe by an employer, employer association, or anyone acting on an employer's behalf, *i.e.*, labor relations consultant. The demand or acceptance of such payment, loan, or bribe is also proscribed." The bill became law in that form. 73 Stat. 537.

While there is some material in the legislative history of the 1959 Act that points in the other direction,

[4] The committee reference is actually to Section 111, which became Section 211 of the Senate bill upon passage. 105 Cong. Rec. 6745.

we do not believe that, viewed in its entirety, the history indicates that the specification of "loans" as within the categories of payments prohibited by Section 302 was intended to broaden the previously existing prohibitions. On the contrary, both the language of Section 302 as originally enacted, and its purpose of protecting the integrity of the collective bargaining process, show that it covered loans as well as outright gifts.

CONCLUSION

It is respectfully submitted that, for the foregoing reasons, this Court should note probable jurisdiction of this appeal.

J. LEE RANKIN,
Solicitor General.
MALCOLM RICHARD WILKEY,
Assistant Attorney General.
BEATRICE ROSENBERG,
EUGENE L. GRIMM,
Attorneys.

MAY 1960.

APPENDIX A

The district court made the following pertinent remarks and entered the following oral order at the close of the hearing on the motions to dismiss (R. 78–81):

> We now come to the next step. Having found as I do on the Government's judicial admission that the transaction was a loan, we must then resolve whether the transaction as a loan was violative of the statute as it was at the time of the transaction, and I am of the opinion that it was not. I reject the argument that the subsequent action and the legislative history upon which that action was predicated by the Congress in 1959 in injecting into the statute the specific words dealing with a loan were intended to broaden that which I take it the Government urges was manifest here. I am, therefore, of the opinion that on the extrinsic evidence offered to be introduced by the Government and its judicial admission the transaction was not an offense contemplated by the statute as it existed at the time.
>
> * * * * *
>
> I am now granting the motion of all defendants to dismiss the indictment upon the ground that it fails to charge an offense of the statute as it read at the time the transaction occurred.
>
> In the light of that ruling I see no necessity to rule upon the remaining questions raised, to wit: variance, the effect of the statute of limitations, the question of venue, and the charge of vagueness of the statute.
>
> The indictment accordingly, and for the reasons ascribed is dismissed.

APPENDIX B

United States District Court, Southern District of New York

United States of America v. *Roy Fruehauf, Fruehauf Trailer Co., et al,* Defendants. Cr. 159–138.

Feb. 18, 1960. Case called before Sugarman J., Hearing begun.

Deft Fruehauf motions to dismiss—Granted.

Deft Fruehauf Trailer Co. motions to dismiss—Granted.

Deft Burge Seymour motions to dismiss—Granted.

Deft Associated Transport Inc. motions to dismiss—Granted.

Deft Brown Equipment & Mfg. Co. motions to dismiss—Granted.

Deft Beck's motions to dismiss—Granted.

Bail cont'd as to Both Defendants.

SUGARMAN, J.

(18)

U.S. GOVERNMENT PRINTING OFFICE: 1960